

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 108 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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MAHENDRABHAI KANTIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR AJ PATEL for Petitioners

Mr. D.N.Patel, A.G.P. for Respondent

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 12/11/97

ORAL JUDGEMENT

By means of filing this petition under Article  
226 of the Constitution, the petitioners have prayed to  
issue a writ of mandamus or any other appropriate writ or

order or direction to quash and set aside order dated December 13/30, 1995 passed by Collector, Vadodara by which prayer made by the petitioners to grant previous sanction under section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act" for short) is turned down. The petitioners have further prayed to declare that provisions of section 43 of the Tenancy Act and Section 65 of the Bombay Land Revenue Code ("Code" for short) do not apply to the land in question, as permission to develop the land under section 29 of the Gujarat Town Planning and Urban Development Act, 1976 ("Town Planning Act" for short) has already been granted by the Competent Authority under the said Act.

2. The petitioners no.1 & 2 are owners of land bearing survey no.392 which is situated at village Atladara, Taluka & District : Vadodara. The said land is included in the Town Planning Scheme and situated in a residential zone. Smt. Chandramaniben Ravbhau Saheb together with petitioners no.1 - 2 and others submitted an application to the respondent under section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 ("Ceiling Act" for short) and claimed exemption in respect of several survey numbers enumerated therein from the provisions of the Act. The respondent i.e. State Government after considering the relevant factors granted exemption to the lands by order dated May 15, 1992 subject to certain terms and conditions enumerated therein. The Competent Authority also granted permission to the owner to execute sale deed in favour of Sundramnagar Co.op.Housing Society Ltd. Vadodara, which is petitioner no.3. The order passed by the respondent under section 20(1) of the Ceiling Act is produced by the petitioners at Annexure-A to the petition.

3. The petitioners made an application seeking permission for development of the lands. The Competent Authority i.e. Deputy Town Development Officer, Vadodara Municipal Corporation, Vadodara granted permission to the petitioners by order dated September 25, 1992 passed under section 29 of the Town Planning Act, which is produced by the petitioners at Annexure-C to the petition. Annexure-D which is produced on the record of the case indicates that time prescribed by order dated May 15, 1992 was extended for a period of one year from January 4, 1995. Similarly, Annexure-E produced by the petitioners with the petition shows that revised plans submitted by the petitioners were sanctioned as well as time prescribed for completion of construction by order dated September 25, 1992 was extended for a period of one year from the date of the order. One of the conditions

stipulated in order dated May 15,1992 required the petitioners to obtain necessary permissions from the competent authorities under the provisions of the Tenancy Act and the Code. The petitioners, therefore, submitted an application dated September 2,1993 to the Collector, Vadodara seeking previous sanction under section 43 of the Tenancy Act. The Collector, Vadodara rejected that application by order dated March 31,1995 which is produced at Annexure-F to the petition. The order passed by the Collector, Vadodara was challenged by the petitioners before Gujarat Revenue Tribunal and the Tribunal remanded the matter to the Collector for being decided on merits. After remand, the petitioners produced additional material in support of their claim for previous sanction under section 43 of the Tenancy Act. The Collector, Vadodara rejected the application submitted by the petitioners by order dated December 13/30, 1995, which is produced at Annexure-M to the petition, giving rise to the present petition.

4. The learned Counsel for the petitioners submitted that in view of the order dated October 30,1996 passed by the Division Bench comprising G.D.Kamat, CJ. as he then was and C.K.Thakkar,J. in Civil Application no.7798/96 filed in Letters Patent Appeal no. 151/96 the work relating to construction executed and completed before October 30, 1996 or under construction before October 30,1996 is not affected and, therefore, necessary declaration should be made by the Court. Learned Counsel for the respondent has submitted that declaration as prayed for by the petitioners should not be made by the Court.

5. It is relevant to note that in L.P.A. 151/96 decision rendered by learned Single Judge in Special Civil Application no. 7735/95 is challenged. In Special Civil Application no. 7735/95 decided on September 28, 1995 learned Single Judge has taken the view that if permission under section 29 of the Town Planning Act is obtained, it is not necessary to obtain N.A.permission under section 65 of the Code in view of section 117 of the Town Planning Act. In L.P.A. no.151/96, Civil Application no. 7798/96 was filed for interim relief and following order is passed by the Division Bench on October 30, 1996:-

"Rule. Heard learned Counsel for the interim relief. Stay of the impugned judgment. It shall, however, not effect the cases which are decided and the work relating to construction is executed and completed or under construction. The stay

shall cover only those cases which arise in future. Rule made absolute accordingly with no order as to costs".

A bare reading of the order passed by the Division Bench makes it abundantly clear that operation of the judgment rendered in Special Civil Application no.7735/95 is stayed with effect from November 1,1996 and work relating to construction executed or completed or under construction prior to November 1,1996 is saved. It is relevant to note that interim order passed by the Division Bench in Civil Application no.7798/96 which was filed in Letters Patent Appeal No.151/96 has become final and is not challenged by the State Government before higher forum. In Special Civil Application no. 5847/95 decided by Court (Coram : J.N.Bhatt,J.) on March 29,1996 a view has been taken that once development permission is granted under section 29 of the Town Planning Act, then it is not necessary to obtain permission under section 43 of the Tenancy Act for conversion of land in view of clear proposition laid down by the Legislature under section 117 of the Town Planning Act. It may be mentioned that while laying down the above referred to principle of law, learned Single Judge has placed reliance on the decisions rendered in the cases of (1) KARIMBHAI KALUBHAI BELIM & ORS. vs. STATE OF GUJARAT, 1996(1) G.L.H. 200, and (2) Special Civil Application no. 887/95 decided by Court (Coram: J.N.Bhatt,J.) on March 20,1996. The net result of the above referred to decisions is that once it is held that N.A. permission under section 65 of the Code is not required to be obtained, land loses its character as an agricultural land and, therefore, it would not be necessary for the holder of the land to obtain any previous sanction as contemplated by section 43 of the Tenancy Act. Similar such view is taken in Special Civil Application no. 5819/94 decided by Court (Coram: A.N.Divecha,J.) on October 5,1995.

6. Having regard to the facts of the case, I am of the view that it cannot be said that the construction made by the petitioners is contrary to the provisions of either section 43 of the Tenancy Act or section 65 of the Code. The Collector, Vadodara was not justified in concluding that the petitioners were not entitled to previous sanction as contemplated under section 43 of the Tenancy Act, as proceedings under section 84(C) of the Tenancy Act were initiated against the petitioners. Under the circumstances, the petition deserves to be allowed.

For the foregoing reasons, the petition succeeds.  
The order dated December 13/30, 1995 passed by the Collector, Vadodara by which the application filed by the petitioners seeking permission under section 43 of the Tenancy Act, which is produced at Annexure-M to the petition, is hereby quashed and set aside, as provisions of section 43 of the Tenancy Act and Section 65 of the Code do not apply to the land in question. Rule is made absolute accordingly, with no order as to costs.

Patel. \*\*\*\*\*